THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

_____

Ex parte INDIANA MILLS & MANUFACTURING, INC.

_____

Appeal No. 97-3795
Application 90/004,259[1]

_____

ON BRIEF

_____

Before CALVERT, COHEN and STAAB, Administrative Patent Judges.

COHEN, Administrative Patent Judge.

[1] Request filed May 31, 1996, Control No. 90/004,259, by Indiana Mills and Manufacturing, Inc. for the Reexamination of Patent No. 4,919,484, issued April 24, 1990, based on application Serial No. 07/302,788, filed January 26, 1989; which is a continuation-in-part of Application 07/111,182, filed October 22, 1987, now U.S. Patent 4,832,410, issued May 23, 1989.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 8, 9, and 11 through 14 in this reexamination proceeding for U.S. Patent No. 4,919,484. The only other pending claims, i.e., claims 1 through 7, 10, and 15 through 18, have been confirmed.

Appellant's invention pertains to a seat belt assembly. An understanding of the invention can be derived from a reading of exemplary claim 8, a copy of which appears in the appendix to appellant's brief.

As prior art evidence, the examiner has applied the documents listed below:

Nicholas	3,318,634	May 9, 1967
Pickett et al. (Pickett)	4,138,157	Feb. 6, 1979
Kozel (Germany)[2]	2,626,159	Dec. 22, 1977

The following rejections are before us for review.

[2] Our understanding of this foreign language document is derived from a reading of a translation thereof appended to the declaration of Harry M. Templin, which declaration forms part of the communication of January 31, 1997 (Paper No. 9).

Claims 8, 9, and 11 through 13 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Kozel.

Claims 8, 9, and 11 through 13 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Pickett in view of Kozel.

Claim 14 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Pickett in view of Kozel, as applied to claims 8, 9, and 11 through 13 above, further in view of Nicholas.

The full text of the examiner's rejections and response to the argument presented by appellant appears in the answer (Paper No. 14), while the complete statement of appellant’s argument can be found in the brief (Paper No. 13).

In the brief (page 4), appellant indicates that claims 8 and 9 stand or fall together and that claims 11, 12, 13, and 14 stand or fall together relative to the rejections made by the examiner. Based upon these groupings, we focus our

attention, infra, exclusively upon the subject matter of independent claims 8 and 11.

OPINION

In reaching our conclusion on the issues raised in this appeal, this panel of the board has carefully considered appellant's specification and claims, the applied teachings,[3] and the respective viewpoints of appellant and the examiner. As a consequence of our review, we make the determinations specified below.

We reverse the respective rejections of claims 8 and 11 under 35 U.S.C. § 102(b) and 35 U.S.C. § 103(a). Our reasoning follows.

[3] In our evaluation of the applied teachings, we have considered all of the disclosure of each teaching for what it would have fairly taught one of ordinary skill in the art. See In re Boe, 355 F.2d 961, 965, 148 USPQ 507, 510 (CCPA 1966). Additionally, this panel of the board has taken into account not only the specific teachings, but also the inferences which one skilled in the art would reasonably have been expected to draw from the disclosure. See In re Preda, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968).

Prior to addressing the rejections of claims 8 and 11 on appeal, we focus our attention upon particular language therein. We, of course, are cognizant of the circumstance that during reexamination claims are construed in the same manner as if they were being examined in a regular utility application. See In re Yamamoto, 740 F.2d 1569, 1571, 222 USPQ 934, 936 (Fed. Cir. 1984), In re Etter, 756 F.2d 852, 858, 225 USPQ 1, 5 (Fed. Cir. 1985), cert. denied, 474 U.S. 828 (1985), and DeGeorge v. Bernier, 768 F.2d 1318, 1322 n.2, 226 USPQ 758, 761 n.2 (Fed. Cir. 1985).

The seat belt assembly of claim 8 requires, inter alia, collecting means for collecting and paying out predetermined slack in linking means in lieu of collection of such slack by a retractor assembly. As to claim 11, the seat belt assembly thereof requires, inter alia, an elastic member which collects and pays out predetermined slack in a linking means in lieu of collection of such slack by a retractor assembly.

We understand the noted language based upon our reading thereof in light of the underlying disclosure. Accordingly, we

readily perceive from appellant's specification (columns 6 and 7) that the claim language encompasses the function of a preferential collection of slack by the collecting means or the elastic member, which as disclosed is based upon the retracting force applied by the collecting means or elastic member exceeding that of the retractor assembly.

With the above understanding in mind, we turn now to the prior art teaching of Kozel.

The Kozel document (translation, pages 1 and 2) addresses a safety belt arrangement for a motor vehicle with a "springily borne seat." Of concern to Kozel, is the problem arising from the relative movement between the seat and the safety belt such that a driver may be lashed to his seat as the belt is tensioned tighter and tighter as the traveling time increases. As a solution to the problem, Kozel teaches (translation, page 2) that a part of the belt band of the safety belt be looped into a fold that is bridged by a "spring element," with "the length of the folded belt band part and of the spring path of the spring element being at least as great as the vertical spring path of the seat." As explained by Kozel (translation, page 3), this design makes it possible for a safety belt to

always be worn snugly applied and yield to a certain degree. More specifically, Kozel points out (translation, page 5) that in a normal position of the seat the fold (Figure 2) is formed with "normal tension" in the safety belt, while in springing-out of the seat upward the spring element (rubber band 8) is tensioned and the fold is folded open as shown in Figure 3. Based upon the indication of a preferred form of the invention being a three-point belt (translation, page 3) and the content of Kozel's claims 1 and 2, it is readily apparent to us that Kozel clearly contemplated the inclusion of the spring element in a basic pelvic safety belt.

To form the basis of an appropriate rejection of claims 8 and 11 under 35 U.S.C. § 102(b), the Kozel reference must disclose, either expressly or under principles of inherency, each and every element of the claimed invention. See In re Paulsen, 30 F.3d 1475, 1478-1479, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994), In re Spada, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990), and RCA Corp. v. Applied Digital Data Systems, Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). When an anticipation is based upon inherency, however, the inherency must

be certain, i.e., the inherency may not be established by probabilities or possibilities. See In re Oelrich, 666 F.2d 578, 581, 212 USPQ 323, 326 (CCPA 1981) and Ex parte Cyba, 155 USPQ 756, 757 (Bd. App. 1966).

We fully appreciate the examiner's assessment of the Kozel teaching relative to the presently claimed subject matter, as explained in the answer. However, the difficulty that we have is that Kozel is silent on any predetermined functional interrelationship whatsoever between the operation of the retractor and the functioning of the spring element.

As earlier highlighted, claims 8 and 11 each require that the collecting means or elastic member collect slack "in lieu of" the collection of slack by the retractor assembly, i.e., a preferential collection by the collection means or elastic member based upon the collecting means or elastic member having a predetermined retracting force that exceeds that of the retractor assembly. This latter relationship between the collecting means or elastic member and the retractor assembly is nowhere to be found in the Kozel teaching. Furthermore, it is our view that it

would be a highly speculative assessment, and therefore inappropriate, to say that the presently claimed relationship between the collecting means or elastic member and the retractor assembly "is" inherent in the Kozel arrangement. Kozel's only clear requirement is for the length of the spring path of the spring element to be at least as great as the vertical spring path of the seat such that upon upward movement of the seat the spring element (rubber band 8) would be tensioned (Figure 3). At this point, we note that appellant (brief, page 8) relies upon the conclusion of Declarant Templin (attachment to Paper No. 9) to support the view that the Kozel safety belt arrangement could not be used to collect or pay out slack in the belt in lieu of collection or paying out of the same slack by the retractor assembly.[4] For our stated reasons, we are constrained to reverse the rejection of claims 8 and 11 under 35 U.S.C. § 102(b).

[4] Upon viewing the "video tape" discussed by Declarant Templin we, like the examiner (answer, page 6), find it to be seriously deficient. Lacking a sound track and/or accompanying written narrative regarding the specifics of the device shown, the depiction in the video alone does not enable us to independently evaluate the illustrated device, purported to be the device shown in the Kozel document. Thus, the video showing cannot be fairly viewed as probative evidence.

In light of our above assessment of the Kozel teaching, we must also reverse the obviousness rejection of claims 8 and 11 under 35 U.S.C. § 103(a) based upon the combined teachings of Pickett and Kozel.[5]

Initially, it is noted that we do not perceive the restraint of Pickett as a one-time use assembly since the patentee appears to enhance the energy absorbing capability of somewhat extensible seat belt webbing by the inclusion of a discontinuity in the webbing itself (Figure 1) or by use of a separate patch (Figure 2). See column 1, lines 15 through 20, and lines 43 through 46 of Pickett. Nevertheless, it should be evident from our earlier analysis that even if the energy absorbing seat belt restraint of Pickett were modified to include the elastic strap (rubber band) of Kozel, as proposed by the examiner, the resulting restraint would not address, in particular, the earlier specified requirements of the highlighted

[5] The test for obviousness is what the combined teachings of the references would have suggested to one having ordinary skill in the art. See In re Young, 927 F.2d 588, 591, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991) and In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981).

language of claims 8 and 11. Since we have determined that the evidence relied upon by the examiner does not support a conclusion of obviousness, we need not address appellant's submission of the Wallen declaration of commercial success (attachment to Paper No. 9).

In summary, this panel of the board:

reverses the rejection of claims 8, 9, and 11 through 13 under 35 U.S.C. § 102(b);

reverses the rejection of claims 8, 9, and 11 through 13 under 35 U.S.C. § 103(a); and

reverses the rejection of claim 14 under 35 U.S.C. § 103(a).

The decision of the examiner is reversed.

REVERSED

IAN A. CALVERT Administrative Patent Judge	)	
IRWIN CHARLES COHEN Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
LAWRENCE J. STAAB Administrative Patent Judge	)	

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